

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

Claim amendments/Status

In this response, claims 1-4, 6-14 and 16-23 are pending in this application. No new claims are presented and no amendments are made.

If the Examiner wishes to present new rejections they should be advanced in a further non-final office action.

Specification

The objection to the amendment filed 10/10/2007 under 35 USC 132(a) is traversed. As pointed out in a telephonic conversation between the Applicant's representative and the Examiner, pages 15 and 17 carry disclosure of memory in the form of "8 GB of physical memory" (page 15) and

It will be understood by those skilled in the art that the apparatus that embodies a part or all of the present invention may be a general purpose device having software arranged to provide a part or all of an embodiment of the invention. The device could be single device or a group of devices and the software could be a single program or a set of programs. Furthermore, any or all of the software used to implement the invention can be communicated via various transmission or storage means such as computer network, floppy disc, CD-ROM or magnetic tape so that the software can be loaded onto one or more devices.

set forth on page 17.

This is submitted as being full and adequate support for the claimed "computer readable medium" which is not new matter.

Rejections under 35 USC § 112

The rejection of claims 21-23 is traversed based on the reasons advanced above in connection with the new matter rejection.

Rejections under 35 USC § 101

The rejection of claims 11-23 under 35 USC § 101 is based on the alleged presence of new matter. As noted above, a computer readable medium is not new matter and the basis for this rejection is submitted as not being tenable.

Rejections under 35 USC § 103

The rejection of claims 1-4, 6-14 and 16-23 35 USC 103(a) as being unpatentable over Hellman et al. (US Patent Application Publication No. 2004/0216030) in view of Sandham (US Patent No. 7,203,636), is respectfully traversed.

In this rejection it is acknowledged that Hellman et al. do not disclose "wherein the mapping accounts for the differences in endianness between the source and target codes." This is presumably because the Hellman et al. arrangement functions adequately for its intended purpose without this feature. To overcome this admitted shortcoming, the Examiner cites Sandham establishing nothing more than this reference shows that it is known from Sandham's approach to transform data in a first endian format into an address in a second endian format (see at least col. 2:37-44).

Thus, in accordance with the rejection, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to recognize that transforming data from one endian format to another is well known in the art and would modify Hellman to include the teaching of Sandham.

The modification would have been obvious because it would allegedly allow the target schema to be processed on a different type of processors.

In this rejection the Examiner has advanced that the Supreme Court stated in *KSR*, 82 USPQ2d at 1397, that the Federal Circuit had erred in four ways:

- (1) "by holding that courts and patent Examiners should look **only** to the problem the patentee was trying to solve " (Id. at, 82

USPQ2d at 1397);

(2) by assuming "that a person of ordinary skill attempting to solve a problem will be led **only** to those elements of prior art designed to solve the same problem" (Id.);

(3) by concluding "that a patent claim cannot be proved obvious merely by showing that the combination of elements was obvious to try" (Id.); and

(4) by overemphasizing "the risk of courts and patent Examiners falling prey to hindsight bias" and as a result applying "rigid preventative rules that deny fact finders recourse to common sense.". (Emphasis added).

However, this does not permit Examiners to freely and indiscriminately use the claimed/disclosed subject matter to find something that is known and to immediately assume that it would be obvious for the hypothetical person of ordinary skill, to use this knowledge in another arrangement. Applicants are not attempting to deny the use of "common sense" in fact the Applicants solicit its application. The question which arises when using common sense is: without any knowledge of the claims and the Applicant's disclosure would the hypothetical person of ordinary skill be at all inclined to seek out the teachings of Sandham and apply them to Hellman et al.? The decision rendered in *KSR* does not allow a rejection of "its known so its obvious." In this rejection, the Examiner leaps immediately from "its known" to "it would be obvious" without any hindsight free showing of why a given piece of knowledge would be applicable in the manner purported.

In more detail, Sandham is cited in an attempt to compensate for the acknowledged lack of disclosure of the claimed mapping accounting for differences in endianness between the source and target model. However, it is submitted that the hypothetical person of ordinary skill would not be particularly motivated to make the combination/transfer of teachings purported to be obvious in this rejection. Sandham is directed to a problem commonly encountered by emulation systems, which run identical software on different computer processor chips wherein format incompatibility is encountered.

Emulation systems are available which enable software (such as an operating system or an application program) of one endian format to operate on hardware of an opposite endian format. Generally, systems of this type convert each word between endian representations on a word-by-word basis. This conversion, when required frequently, introduces a significant overhead into the time required to perform a given task.

The invention disclosed in Sandham is directed to providing a method for emulating a processor of a first type which observes a first convention for ordering the significance of bytes within words on a second type of processor which observes a second convention for ordering the significance of bytes within words.

It is not seen how this relates to Hellman et al. which can be used to derive executable code that transforms source relational databases into the target relational databases. In a one embodiment, the Hellman et al. invention creates a Java program that executes the SQL query using the JDBC (Java Database Connectivity) library. In an alternative embodiment the Java program manipulates the databases directly, without use of an SQL query. No particular drawback appears to be disclosed and therefore nothing to lead the hypothetical person of ordinary skill to look abroad to other patents for modification/problem solution.

Therefore, the question arises as to whether would it in fact be obvious to try the teachings in Hellman et al.

Even in light of the *KSR* decision, there are still three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.

In addition, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

In this situation, it is not seen that there is a disclosed problem to be solved or anything in either of the references which would lead toward the proposed combination of teachings. Indeed, it appears to be nothing more than a “its known so its obvious” type of rejection. That is to say, the

motivation to modify an ontology based arrangement so that it can run on different types of processors, hardly seems suggested by the disclosure of the two documents taken as a whole.

It is therefore submitted that a prima facie case of obviousness has not been established, and that the rejection should be withdrawn.

Conclusion

All issues having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

Early issuance of a Notice of Allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,
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